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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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ALAPATI PAUL SCHWENKE,  
  
Plaintiff,

v.

STATE OF UTAH, and JOHN DOES,  
  
Defendant.

**MEMORANDUM DECISION AND  
ORDER OF DISMISSAL  
WITH PREJUDICE  
AND  
ORDER PLACING RESTRICTIONS  
ON FUTURE PRO SE FILINGS OF  
ALAPATI PAUL SCHWENKE**

Case No. 4:21-cv-00065-DN-PK

District Judge David Nuffer  
Magistrate Judge Paul Kohler

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On November 15, 2021, an Order to Show Cause<sup>1</sup> entered which required Plaintiff Alapati Paul Schwenke to (1) file a memorandum showing cause as to why his Complaint<sup>2</sup> should not be dismissed as frivolous and failing to state a claim on which relief may be granted; and (2) file a memorandum showing cause as to why an order placing restrictions on his pro se filings in this court should not enter. On December 14, 2021, Mr. Schwenke filed his Response<sup>3</sup> to the Order to Show Cause.

Mr. Schwenke's Response consists of three pages which recite the conclusory allegations of his Complaint.<sup>4</sup> The Response fails to address the any of the issues raised in the Order to Show Cause regarding his Complaint being frivolous and failing to state a claim. And the Response fails to

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<sup>1</sup> Order to Show Cause Re: (1) Dismissal for Failure to State a Claim and (2) Restricted Filer Status ("Order to Show Cause"), [docket no. 19](#), filed Nov. 15, 2021.

<sup>2</sup> Petition for Expedited Relief from Race Discrimination by Violations of Petitioner's Constitutional Rights Against Double Jeopardy, False Prosecution, Unlawful Convictions, and Imprisonment ("Complaint"), [docket no. 5](#), filed July 26, 2021.

<sup>3</sup> Petitioner's Response to the District Judge's Order to Show Cause ("Response"), [docket no. 21](#), filed Dec. 14, 2021.

<sup>4</sup> *Id.* Plaintiff's Response also attached a copy of this Complaint. [Docket no. 21-1](#), filed Dec. 14, 2021.

address any of the issues raised in the Order to Show Cause regarding the appropriateness of placing restrictions on Plaintiff's future pro se filings in this court.

Therefore, Mr. Schwenke's Complaint<sup>5</sup> is DISMISSED with prejudice, and restriction are placed on Mr. Schwenke's future pro se filings in this court.

### DISCUSSION

Mr. Schwenke filed a pro se Complaint alleging claims against Defendant State of Utah (the "State") for racial discrimination and violation of Mr. Schwenke's constitutional right against double jeopardy.<sup>6</sup> The Complaint provides few factual allegations and very little detail in the facts that are alleged. Mr. Schwenke's claims arise from his criminal convictions in Utah state court for securities fraud and pattern of unlawful activity.<sup>7</sup> Mr. Schwenke alleges that he is innocent of these crimes and that he was falsely prosecuted and unlawfully convicted based on his Samoan race.<sup>8</sup>

Mr. Schwenke raised these precise claims and allegations against the State in two prior civil cases in which he appeared pro se: *Schwenke v. State of Utah et al.*, 2:17-cv-00833-DN (D. Utah);<sup>9</sup> and *Schwenke v. State of Utah et al.*, 4:18-cv-00016-DN (D. Utah).<sup>10</sup> Mr. Schwenke

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<sup>5</sup> [Docket no. 5](#), filed July 26, 2021.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Amended Petition for Freedom and Damages, [docket no. 16-5](#) in 2:17-cv-00833-DN (D. Utah), filed Sept. 5, 2017.

<sup>10</sup> Petition for Relief from Double Jeopardy, [docket no. 2-1](#) in 4:18-cv-00016-DN (D. Utah), filed Apr. 23, 2018.

initiated these cases in Utah state court, but they were later removed to the United States District Court, District of Utah.<sup>11</sup> And the claims against the State were dismissed with prejudice.<sup>12</sup>

“[A] dismissal with prejudice bars the refile of the same claim in the same court by the same plaintiff.”<sup>13</sup> Therefore, Mr. Schwenke’s claims against the State in this case are barred, and his Complaint is frivolous and fails to state a claim on which relief may be granted.

Additionally, Mr. Schwenke has raised similar claims and allegations against the State in two prior habeas cases challenging his Utah state court convictions in which he appeared pro se: *Schwenke v. State of Utah*, 2:08-cv-00467-TS (D. Utah);<sup>14</sup> *Schwenke v. State of Utah*, 2:14-cv-00750-DB (D. Utah).<sup>15</sup> Mr. Schwenke’s claims were denied and his habeas petitions were dismissed in these cases.<sup>16</sup>

Mr. Schwenke’s Complaint in this case constitutes the fifth time his has raised the same or similar claims, allegations, and arguments against the State. In each instance, Mr. Schwenke appeared pro se, his claims were dismissed, and his arguments were rejected. Mr. Schwenke’s pro se filing of multiple duplicative cases that were found to be frivolous or otherwise without merit constitutes a pattern of vexatious litigation and willful disregard of court orders and judgments that is prejudicial to the administration of justice.

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<sup>11</sup> Notice of Removal to Federal Court, [docket no. 2](#) in 2:17-cv-00833-DN (D. Utah), filed July 21, 2017; Notice of Removal of a Civil Action from State Court to Federal Court, [docket no. 2](#) in 4:18-cv-00016-DN (D. Utah), filed Apr. 23, 2018).

<sup>12</sup> Judgment in a Civil Case, [docket no. 30](#) in 2:17-cv-00833-DN (D. Utah); Final Judgment in a Civil Case, [docket no. 14](#) in 4:18-cv-00016-DN (D. Utah), filed Jan. 2, 2019.

<sup>13</sup> *Griffin v. Gash*, 317 Fed. App’x. 782, 783 (10th Cir. 2009) (citing *Semtek Int’l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505-06 (2001)).

<sup>14</sup> Petition for a Writ of Habeas Corpus, [docket no. 3](#) in 2:08-cv-00467-TS, filed June 18, 2008.

<sup>15</sup> Demand Pursuant to 28 USCA § 2241 for an Order to Cease Violation of Petitioner’s Constitutional Right Against Double Jeopardy, [docket no. 4](#) in 2:14-cv-00750-DB (D. Utah), filed Oct. 29, 2014.

<sup>16</sup> Memorandum Decision & Order Denying Habeas Petition, [docket no. 54](#) in 2:08-cv-00467-TS, filed Sept. 15, 2011; Memorandum Decision & Dismissal Order, [docket no. 28](#) in 2:14-cv-00750-DB (D. Utah), filed Mar. 17, 2016.

Therefore, it is appropriate that Mr. Schwenke be placed on the United States District Court, District of Utah's restricted filer list, and that restrictions be placed on Mr. Schwenke's future pro se filings in this court.

### **ORDER**

IT IS HEREBY ORDERED that Mr. Schwenke's Complaint<sup>17</sup> is DISMISSED with prejudice. The Clerk is directed to close the case.

IT IS FURTHER ORDERED that Alapati Paul Schwenke is placed on the United States District Court, District of Utah's restricted filer list. The following restrictions shall apply to any future pro se pleadings attempted to be filed by Mr. Schwenke:

- (1) Mr. Schwenke is required to file a petition with the Clerk of Court requesting leave to file a pro se action;
- (2) The petition must include a list of all of Mr. Schwenke's current or previously filed lawsuits;
- (3) The petition must include a notarized affidavit from Mr. Schwenke reciting the issues he seeks to present and including a short discussion of the legal basis asserted for the claims;
- (4) The affidavit must include an assertion that, to the best of Mr. Schwenke's knowledge, the legal arguments raised have not previously been raised in other lawsuits and are not frivolous or brought in bad faith;
- (5) The petition must include a copy of the complaint Mr. Schwenke seeks to file;
- (6) The Clerk of Court shall send the petition and referenced materials to a magistrate judge for review to determine whether the proposed complaint is meritorious, duplicative, or frivolous;

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<sup>17</sup> [Docket no. 5](#), filed July 26, 2021.

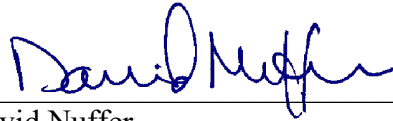
(7) The magistrate judge shall determine if the proposed complaint is without merit, duplicative, or frivolous;

(8) The magistrate judge shall forward the proposed complaint and a report and recommendation regarding the proposed complaint to the Chief District Court Judge for further review; and

(9) The proposed complaint shall be filed only with the review and consent of the Chief District Court Judge.

Signed December 22, 2021.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer

United States District Judge